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5 Attorneys for Defendant and Cross-Complainant  
**PAULEY CONSTRUCTION, INC.**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1 SIFA TUIAKI and LUPE TUIAKI,  
2 Plaintiffs.

v.  
PACIFIC GAS AND ELECTRIC  
COMPANY, PAULEY  
CONSTRUCTION, INC., TRAFFIC  
SOLUTIONS, INC., ADELPHIA  
TELECOMMUNICATIONS CO., INC.,  
SBC TELECOMMUNICATIONS, INC.,  
MOBILE TOOL INTERNATIONAL, INC.  
dba TELSTA, COUNTY OF  
MENDOCINO, STATE OF  
CALIFORNIA, PACIFIC BELL  
TELEPHONE COMPANY, PACIFIC  
TELESIS GROUP, SBC OPERATIONS,  
INC., and DOES 1 to 50.

1 Defendants.

**2 AND RELATED CROSS-ACTION.**

CASE NO.: C07 2257 JCS

**PAULEY CONSTRUCTION, INC.'S.  
NOTICE OF MOTION AND MOTION  
TO DISMISS FOR FAILURE TO STATE  
A CLAIM UPON WHICH RELIEF MAY  
BE GRANTED [F.R.C.P. 12(b)(6)]**

Cross-complaint Filed:	11/2/05
Am. Cross-complaint Filed:	2/22/07
2nd Am. Cross-complaint Filed:	4/11/07

Date: June 22, 2007  
Time: 9:30 a.m.  
Location: Courtroom A, 15th Floor  
Judge: Magistrate Judge Joseph C. Spero

## JURY TRIAL DEMANDED

**TO ALL PARTIES HEREIN AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on June 22, 2007, at 9:30 a.m. or soon thereafter as the matter can be heard in Courtroom A, 15<sup>th</sup> Floor, of the above-noted Court, located at 450 Golden Gate Avenue, San Francisco, California 94102. Cross-defendant PAULEY CONSTRUCTION INC.

**PAULEY CONSTRUCTION, INC.'S. NOTICE OF MOTION AND  
MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM  
UPON WHICH RELIEF MAY BE GRANTED [F.R.C.P. 12(b)(6)];  
Case # C07 2257 JCS**

1 ("Pauley") will move the Court to dismiss Cross-complainant Adelphia Communication Corporation's  
 2 ("Adelphia") Cross-complaint pursuant to F.R.C.P. 12(b)(6) because Cross-complainant Adelphia's  
 3 Cross-complaint fails to state a claim upon which relief can be granted, on the grounds that Adelphia's  
 4 Second Amended Cross-complaint fails to state facts sufficient to constitute a cause of action against  
 5 the moving Cross-defendant, thus there is a lack of a cognizable legal theory or the absence of  
 6 sufficient facts alleged by Adelphia under a cognizable legal theory. It cannot be determined  
 7 therefrom how Cross-defendant could be liable to Cross-complainant Adelphia, who fails to  
 8 adequately plead the relevant contract claims against Pauley. In addition, Adelphia's causes of action  
 9 for Implied Equitable Indemnity and Contribution are barred under California Code of Civil Procedure  
 10 § 877.6( c).

11 The motion will be based on this Notice of Motion and Motion, the Memorandum of Points  
 12 and Authorities served and filed herewith, the Request for Judicial Notice served and filed herewith,  
 13 the pleadings and papers filed herein, and any other written or oral argument or evidence that may be  
 14 presented at the hearing on this motion.

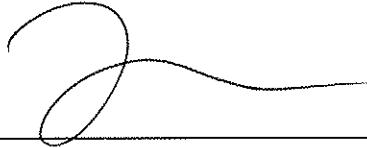
15 **JURY DEMAND**

16 Pauley Construction, Inc. hereby demands a trial by jury in this action.

17 DATED: May 14, 2007

18 CLAPP, MORONEY, BELLAGAMBA  
 19 and VUCINICH

20 By: \_\_\_\_\_



21 JEFFREY M. VUCINICH  
 22 JOSHUA W. ROSE  
 23 Attorneys for Defendant/Cross-Complainant/  
 24 Cross-Defendant  
 25 PAULEY CONSTRUCTION, INC.  
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